

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|  |   |                                   |
|--|---|-----------------------------------|
| <b>STATE OF OHIO,</b>                        | : | <b>CASE NO. 4:23-cv-00517-JRA</b> |
|  | : |                                   |
| <b>UNITED STATES OF AMERICA,</b>             | : | <b>JUDGE JOHN R. ADAMS</b>        |
|  | : |                                   |
| <b>Plaintiffs,</b>                           | : |                                   |
|  | : |                                   |
| <b>v.</b>                                    | : |                                   |
|  | : |                                   |
| <b>NORFOLK SOUTHERN CORPORATION, et al.,</b> | : |                                   |
|  | : |                                   |
| <b>Defendants.</b>                           | : |                                   |

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**STATE OF OHIO’S CIVIL RULE 26 INITIAL DISCLOSURES**

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In accordance with Rule 26 of the Federal Rules of Civil Procedure, Plaintiff, the State of Ohio, makes these initial disclosures. These disclosures are based on information currently available to the State related to the claims asserted in this case. If additional information becomes available, the State will supplement these initial disclosures in a timely manner.

**I. Individuals likely to have discoverable information that the State may use to support its claims**

At this time, Ohio expects its primary witnesses will be:

1. Melisa Witherspoon  
Ohio EPA, Division of Environmental Response and Revitalization, Central Office  
Lazarus Government Center  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215  
Phone: (Contact through counsel)  
Melisa Witherspoon may have discoverable information relating to the hazardous waste violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

2. Amy Klei  
Ohio EPA, Division of Drinking and Ground Waters, Central Office  
Lazarus Government Center  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215  
Phone: (Contact through counsel)  
Amy Klei may have discoverable information relating to the surface water violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.
3. Frank Zinglaes  
Ohio EPA, Division of Environmental Response and Revitalization,  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Phone: (Contact through counsel)  
Frank Zingales may have discoverable information relating to the hazardous waste violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.
4. Karen Nesbit  
Ohio EPA, Division of Environmental Response and Revitalization, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Phone: (Contact through counsel)  
Karen Nesbit may have discoverable information relating to the hazardous waste violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.
5. Tim Eyerdom  
Ohio EPA, Division of Environmental Response and Revitalization,  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Phone: (Contact through counsel)  
Tim Eyerdom may have discoverable information relating to the hazardous waste violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.
6. Keith Wise  
Ohio EPA, Division of Emergency Response, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Phone: (Contact through counsel)

Keith Wise may have discoverable information relating to the emergency response of Ohio EPA, which may be pertinent to some or all of the counts in the Complaint, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

7. Kurt Kollar

Ohio EPA, Division of Emergency Response, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Phone: (Contact through counsel)

Kurt Kollar may have discoverable information relating to the emergency response of Ohio EPA, which may be pertinent to some or all of the counts in the Complaint, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

8. Michael Eberle

Ohio EPA, Division of Emergency Response, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Phone: (Contact through counsel)

Michael Eberle may have discoverable information relating to the emergency response of Ohio EPA, which may be pertinent to some or all of the counts in the Complaint, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

9. Daniel Wiltse

Ohio EPA, Division of Emergency Response, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Phone: (Contact through counsel)

Daniel Wiltse may have discoverable information relating to the emergency response of Ohio EPA, which may be pertinent to some or all of the counts in the Complaint, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

10. William Zawiski

Ohio EPA, Division of Surface Water, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Phone: (Contact through counsel)

William Zawiski may have discoverable information relating to the surface water violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

11. Erik Bewley

Ohio EPA, Division of Air Pollution Control, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Phone: (Contact through counsel)

Erik Bewley may have discoverable information relating to the air pollution violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

12. Chief Keith Drabick  
East Palestine Fire Department

13. Peggy Clark  
Columbiana County EMA

14. Scott Deutsch (as on cross)  
Norfolk Southern

15. Robert Wood (as on cross)  
Norfolk Southern

\*See Appendix for additional individuals who may have discoverable information.

## **II. Documents, ESI, and tangible things the State has in its possession, custody, or control and may use to support its claims**

### Division of Environmental Response and Revitalization

- DERR Ongoing Team Meeting Notes
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine
  - o Includes work groups:
    - Agricultural
    - Ecological
    - Environmental and data
    - Risk
- DERR Field Notes from Derailment Site
  - o Ohio EPA Internal Storage – Ohio EPA OneDrive Site
    - Ohio EPA J:Drive > OER > NS Train Derailment
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine
- DERR Field Notes from Lordstown
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine
- DERR Field Notes from Maple Heights
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine

- DERR Photo Logs
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine
- DERR Daily Field Investigation Assessment Form
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine
- DERR comments on Norfolk Southern Work Plans
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DERR > East Palestine

#### Office of Emergency Response

- ER Call Logs
  - o Ohio EPA Internal Storage – PremierOne Records
    - Case Folders > IPIR – Initial Pollution Incident Report
- ER Notices of Violation
  - o Ohio EPA Internal Storage – PremierOne Records
    - Case Folders > NOV
- ER Incident Updates
  - o Ohio EPA Internal Storage – Microsoft Outlook
- ER Photos
  - o Ohio EPA Internal Storage – Ohio EPA OneDrive Site
    - Ohio EPA J:Drive > OER > NS Train Derailment
  - o Ohio EPA Internal Storage – Ohio EPA ER Storage
    - Spill Records > 2020 – 2029 > 2023 > 2302EPA0000166

#### Division of Surface Water

- Observations on Norfolk Southern laboratory data sheets
  - o Ohio EPA Internal Storage – Microsoft Outlook
- Internal communication about press conference speech material
  - o Ohio EPA Internal Storage – Microsoft Outlook
- Observations on ORSANCO data
  - o Ohio EPA Internal Storage – Microsoft Outlook
- Fish collection data pursuant to quality assurance plan (communications with Ohio State University lab performing analysis on fish collection)
  - o Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - DSW > Water Quality > Fish Tissue > East Palestine
- Study plans for Norfolk Southern to develop data going forward
  - o In the possession of Bill Zawiski, Supervisor in Division of Surface Water at Ohio EPA's Northeast District Office
- Data analysis and hot spot maps
  - o Ohio EPA Internal Storage – Ohio EPA OneDrive Site
    - State of Ohio > WORK > Tech Assist > Derailment

#### Division of Drinking & Ground Waters

- Potable water work group meeting notes

- Ohio EPA Internal Storage – Microsoft Outlook
- Daily update reports on team folder from March 11, 2023 to April 26, 2023
  - Ohio EPA Internal Storage – Ohio EPA SharePoint Site
    - EPA Unified Command Support > DDAGW
- Sampling results from Summit Environmental Laboratories
  - Ohio EPA Internal Storage – Ohio EPA OneDrive Site
- Notes on potable work plan and sentinel well work plan
  - Ohio EPA Internal Storage – Microsoft Outlook

#### Division of Air Pollution Control

- Comments on review of U.S. EPA sampling data
  - Ohio EPA Internal Storage – Microsoft Outlook
- General communications on air data
  - In the possession of Bob Hodanbosi, Chief of Division of Air Pollution Control at Ohio EPA
    - H:Drive > ADMIN > BH EP Correspondence

#### Ohio EPA Misc. Information Locations

- Ohio EPA personnel emails
- Ohio EPA personnel cell phones

\*All documents generated February 3, 2023 or after.

In addition to the documents referenced above, the State may also use documents in the possession of other State agencies to support its claims.

### **III. Computation of each category of damages claimed by the State**

#### **A. Damages**

At this time, the State does not have a computation of damages. All necessary information is not in the State's possession at this time. Additionally, the computation of damages will require expert analysis. The State will provide its list of experts and accompanying expert reports on the date ordered by this Court in the case management schedule.

#### **B. Civil Penalty**

Although Fed. R. Civ. P. 26(a)(1)(A)(iii) asks for a computation of damages, this matter also involves civil penalty. The State will be seeking civil penalty and costs of enforcement. Ohio

Rev. Code §§ 3734.13(C) and 6111.09(A) allow for a civil penalty of up to \$10,000 per day for each day of each violation, including each day of violation subsequent to the filing of the Complaint. Ohio Rev. Code § 3704.06 allows for a civil penalty of up to \$25,000 per day for each day of each violation, including each day of violation subsequent to the filing of the Complaint.

**C. Response Costs Under CERCLA**

The State is seeking recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) not inconsistent with the National Contingency Plan as set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607.

**D. Other Costs**

The State is also seeking reimbursement of other costs of this action including response costs under Ohio Rev. Code § 3745.12, costs incurred by various State agencies, and costs incurred by the Ohio Attorney General's Office, including enforcement costs and reasonable attorneys' fees. The State will set forth evidence of these costs at trial.

Respectfully submitted,

DAVE YOST  
OHIO ATTORNEY GENERAL

s/ Karrie P. Kunkel

AMBER WOOTTON HERTLEIN (0083858)

KARRIE P. KUNKEL (0089755)

KATHERINE A. WALKER (0093850)

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*Counsel for Plaintiff State of Ohio*

**Certificate of Service**

This certifies that on July 12, 2023, I served State of Ohio's Civil Rule 26 Initial Disclosures by filing through the Court's CM/ECF system, which electronically notified all parties of record.

s/ Karrie P. Kunkel

AMBER WOOTTON HERTLEIN (0083858)

KARRIE P. KUNKEL (0089755)

KATHERINE A. WALKER (0093850)

NORA M. BATY (0102678)

*Counsel for Plaintiff State of Ohio*



## **Appendix to State of Ohio's Initial Disclosures**

### Ohio EPA (Contact through counsel)

The following individuals may have discoverable information relating to Ohio EPA's knowledge of the environmental violations in this case, including but not limited to costs, damages, injunctive relief, and facts relevant to the assessment of civil penalty.

1. Jennifer Kurko
2. Natalie Oryschkewych
3. John Paquelet
4. Mark Caetta
5. Craig Kowalski
6. Sheila Abraham
7. Robert Almquist
8. Nick Roope
9. Ed D'amato
10. Chelsea Lamoreaux
11. Jeff Martin
12. Mitch Mathews
13. Eric Sainey
14. Sarah Beal
15. Brian Tucker
16. Carrie Rasik
17. Karen Potter
18. Bill Batin
19. Tori Sigler
20. Ed Link
21. Wendy Vorwerk
22. Kurtis Herlocher
23. Dan Tjoelker
24. Richard Murray
25. Mark Rickrich
26. Melissa Storch
27. Aaron Mueller
28. James Fisher
29. Niko Hogya
30. Justin Burke
31. Colin White
32. Tanushree Courlas
33. Miranda McGrothers
34. Ed Gortner
35. Toni Carmichael
36. Alyssa Corbeil
37. Trevor Irwin
38. Ben Harriff
39. Wade Balser

40. Ron Fodo
41. Justin Burke
42. Tanushree Courlas
43. Colin White (no longer with OEPA)
44. Miranda McGrothers
45. Andrew Barienbrock
46. Carrie Winger
47. Alexandria Haritos
48. Aaron Mueller
49. James Fisher
50. Allen Tyler
51. Nikko Hogya
52. Sam Zullo (intern)
53. Meghan Bahnnoo (intern)
54. Josh Reddick (intern)
55. Todd Fisher
56. Nick Sams
57. Derek Wojcik
58. Paige Henson
59. Bridget Haag
60. Zach Taneyhill (no longer with OEPA)
61. Olivia Gugliemotto
62. Steven Wargo
63. Krista Vidacs
64. Ethan Elias
65. Joe Kollar
66. Erin Garrett
67. Chris Maslo
68. Laurel Ljubi
69. Tyler Behm
70. Trevor Irwin
71. Ben Harriff
72. Toni Carmichael
73. Alyssa Corbeil
74. Wade Balser
75. Ron Fodo (retiring 7/28/2023)
76. Patricia Vanah
77. Dan Bogeovski
78. Laura Shriver
79. Archie Lunsey
80. Robert Miltner
81. Bob Hodanbosi
82. Tiffani Kavalec
83. Jeff Gerdes

84. Paul Koval

85. Director Anne Vogel

Ohio DNR (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Natural Resources' response to the derailment that may be used to support the State's claims.

1. Jeff Collingwood
2. Jeremy Carter
3. Scott Angelo
4. Pete Novotny
5. Jeremy Payne
6. Brett Barnes
7. Brian Keyser
8. Jesse Janosik
9. Tom Frank
10. Scott Cartwright
11. Eric Bear
12. Craig Porter
13. Marino Pellegrini
14. Curt Wagner
15. Chris Aman
16. Matt Wolfe
17. Ken Fitz
18. Geoff Westerfield
19. Carly Jarvis
20. Laura Brown
21. John Navarro
22. Jamey Emmert
23. Ryan Zeisler
24. Eric Traczyk
25. Matthew Smith
26. Ryan Moss
27. Bob Gable

Ohio Department of Health (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Health's response to the derailment that may be used to support the State's claims.

1. Jennifer Voit
2. Tabitha Jones-McKnight

3. Zuzana Bohrer
4. Allison Buck-Priddy
5. Audrey Blakeman
6. Ian McKenzie
7. Michael Carper
8. Brandon Blakeman
9. Anne Gregg
10. W. Gene Phillips
11. Mary Shaffer
12. Shakil Saghir
13. Mary Shaffer
14. Sarah Goodwill Humphrey
15. Angela Lee
16. Miranda Williams
17. Dr. Sara Margrey
18. Shelby Hale
19. Emily Ward
20. Jon George
21. Brian Fowler
22. Rich Thomas
23. Stacy Lender
24. Kristen Dickerson

Ohio Department of Public Safety (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Public Safety's response to the derailment that may be used to support the State's claims.

1. Sima Merick
2. Joshua Sigmon
3. Andrew Elder
4. Robert Zehentbauer
5. Michelle Sowers
6. Director Andy Wilson
7. Karen Huey
8. Jolene Phillips
9. Michael Miller
10. Jennifer Davis
11. Nicole McCombs
12. Alexandra Trame
13. Ganrielle Kendall
14. Jim Meador

15. Charles Thomas
16. Amelia Moore

Ohio MHAS (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Mental Health and Addiction Services' response to the derailment that may be used to support the State's claims.

1. Caitlin Beha Worth
2. Director Lori Criss
3. Lois Hochstetler
4. Angelika McClelland
5. Vicki Montesano
6. Curtis Smith
7. Jodi Snider

Ohio Department of Agriculture (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Agriculture's response to the derailment that may be used to support the State's claims.

1. Director Brian Baldrige
2. Tracy Intihar
3. David Miran, Jr.
4. Chris Geyer
5. Dan Kenny
6. Dr. Dennis Summers
7. Melanie Prarat

Ohio Department of Transportation (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Transportation's response to the derailment that may be used to support the State's claims.

1. Sam Hubby
2. Stephen Hughes
3. Michael Stuber
4. Nathan Landis
5. J Jenkins
6. Seth Bradford
7. Benjamin Brown
8. Gregory Carver
9. John Dickey

10. Darrel Dominick
11. Scott Gallo
12. Kendra George
13. Trent Harrold
14. Todd Howard
15. Raymond Jennings
16. Arthur Jordan
17. Jeremy Lindeman
18. Herbert Long
19. Randall McGaffick
20. Travis Nolan
21. Gregory Sanor
22. Mark Strank
23. William Wodarek
24. Kameron Kosek
25. Jeffery Wessling
26. Robert Marra
27. Edward Deville
28. Landon Lutz
29. Linda McCaffrey

Ohio Department of Medicaid (Contact through counsel)

The following individuals may have discoverable information relating to Ohio Department of Medicaid's response to the derailment that may be used to support the State's claims.

1. Rachel Hopmoen
2. Erica Munnerlyn
3. Kathy Cameron
4. Amanda Bryant
5. Hauna Strohl
6. Patrick Beatty